



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2007-0112; FRL-9932-21-Region 10]

**Approval and Promulgation of Air Quality Implementation Plans;
Washington**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revisions submitted by the State of Washington, Department of Ecology (Ecology). These revisions pertain to the plan to maintain the 1997 8-hour national ambient air quality standard (NAAQS) for ozone in the Vancouver portion of the Portland/Vancouver Air Quality Maintenance Area (Pdx/Van AQMA). The maintenance plan for this area meets Clean Air Act (CAA) requirements and demonstrates that the Vancouver portion of the Pdx/Van AQMA will be able to remain in attainment for the 1997 ozone NAAQS through 2015. The EPA is approving the maintenance plan and minor revisions to the motor vehicle inspection and maintenance (I/M) regulations in the statewide Emission Check Program.

DATES: This action is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2007-0112. All documents in the docket are listed on the

<http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel, (206) 553-6121, or by email at vaupel.claudia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for this action is discussed in more detail in our May 5, 2010 proposal. *See* 75 FR 24542. In that action, the EPA proposed to approve the CAA 110(a)(1) 8-hour ozone maintenance plan that the State of Washington submitted to demonstrate the continued attainment of the 1997 8-hour ozone NAAQS (the 8-hour ozone NAAQS) in the Vancouver portion of the Pdx/Van AQMA. Areas like the Vancouver portion of the Pdx/Van AQMA, that had been designated attainment (unclassifiable/attainment) for the 8-hour ozone NAAQS and had CAA 175A maintenance plans in place for the 1-hour ozone NAAQS, were required under 40 CFR 51.905, to submit 110(a)(1) plans for antibacksliding purposes to provide for maintenance of the 8-hour ozone NAAQS for at least 10 years after designation for the 8-hour

ozone NAAQS. In the May 5, 2010 proposed action, the EPA found that the maintenance plan and its supporting rules met the requirements of the CAA.

The EPA also proposed to approve revisions to the I/M regulations in the statewide Emission Check Program. The revisions enhance the clarity of the rules and update them to reflect changing technology in automobiles, including allowing late model vehicles to be tested with their on-board diagnostic systems instead of with a tail-pipe test. The revisions also remove inspection fee provisions that had been previously approved into the SIP.

II. Response to Comments

The EPA received one comment on our May 5, 2010 proposed approval (75 FR 24542). The comment from the Sierra Club raised concerns about affirmative defense provisions applicable to violations that occur due to excess emissions during startup, shutdown, maintenance and upsets (SSM) in the existing Washington SIP.

The Sierra Club commented that the existence of the affirmative defense provisions in the underlying SIP compromises the ability of the maintenance plan to achieve its goals and threatens to cause or contribute to NAAQS violations in the Pdx/Van AQMA and downwind. Specifically, the Sierra Club described three concerns with the affirmative defense provisions in Southwest Clean Air Agency (SWCAA) and Ecology regulations, SWCAA 400-107(4)-(6) and Washington Administrative Code (WAC) 173-400-107(4)-(6). The commenter argued that the affirmative defense for excess emissions during startup and shutdown should be removed because the provisions “lack justification” and because excess emissions “are already taken into consideration when setting emission standards and limits” and the regulatory provisions are inconsistent with EPA guidance for compliance with CAA requirements for SIP provisions as expressed in the Memorandum of Steven A. Herman and Robert Perciasepe, Policy on Excess

Emissions During Malfunctions, Startup and Shutdown (August 11, 1999) (the “Herman Memo”). The commenter also argued that the affirmative defense for excess emissions during scheduled maintenance should be eliminated “because routine maintenance is part of normal operations and should not, by itself, justify excess emissions” and that the regulatory provisions are inconsistent with the interpretation of the CAA in the Herman Memo. Finally, the commenter argued that the affirmative defense for excess emissions during upsets (i.e., malfunctions) is not consistent with the EPA interpretation of the requirements of the CAA in the Herman Memo for such provisions.

The SWCAA and Ecology regulations that provide for an affirmative defense for emissions during certain events that the commenter identified as objectionable are not a part of the specific SIP submission that was the subject of the EPA’s proposed action but were, rather, approved into the Washington SIP in 1995. The EPA acknowledges that these specific provisions are not consistent with CAA requirements, in light of more recent court decisions and regulatory actions. However, the EPA does not agree that the affirmative defense provisions in the Washington SIP provide a basis for disapproval of the maintenance plan submission. The EPA’s review for this submission is limited to whether the specific maintenance requirements in CAA section 110(a)(1) and the provisions of the EPA’s Phase 1 Implementation Rule (40 CFR section 51.905(a)(3) and (4)) as explained in our May 20, 2005 guidance¹, have been met. While the EPA understands the commenter’s concerns about the existing SWCAA and Ecology SIP provisions, in the context of a 110(a)(1) maintenance plan approval the EPA is not required to re-evaluate the validity of all previously approved SIP provisions.

¹ May 20, 2005 memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act*.

Although it is not required to address existing affirmative defense provisions in the context of this action on a maintenance plan, the EPA does have other authority to address alleged deficiencies in existing SIP provisions. In particular, the EPA has authority under section 110(k)(5) to address existing SIP deficiencies whenever it determines that a SIP provision is substantially inadequate. The EPA notes that since receipt of the comments discussed above on this action, the EPA finalized a call for SIP revisions (SSM SIP Call) as necessary to remove the identified affirmative defense provisions from the Washington SIP. *See* 80 FR 33840, June 12, 2015. Thus, the EPA has addressed the concerns regarding the affirmative defense provisions in the SWCAA and Ecology regulations raised by the commenter in a separate action.²

The EPA emphasizes that its approval of a maintenance plan does not mean that the SIP for the state in question fully meets each and every requirement of the CAA. More specifically, this approval does not constitute a finding that Washington's SIP, including the affirmative defense provisions, meets all CAA requirements. Nor does this final action contradict the EPA's separate finding in the SSM SIP Call that certain provisions in the Washington SIP, including the SWCAA rules, are substantially inadequate and therefore must be addressed to be consistent with CAA requirements. Rather, the nature of today's final action is a finding addressing the adequacy of the SIP to meet certain identified maintenance requirements. As discussed in our proposed action, the following is a summary of our evaluation of the submission against the five maintenance requirements in CAA section 110(a)(1) and the provisions of the EPA's Phase 1 Implementation Rule (40 CFR section 51.905(a)(3) and (4)):

² Furthermore, the commenter's characterization of the EPA's interpretation of the CAA with respect to affirmative defense provisions in SIPs is no longer current. Readers interested in the EPA's position on affirmative defense provisions should refer to the SSM SIP Call at 80 FR 33840 (June 12, 2015).

1. An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) from a base year chosen by the state.

Ecology provided a comprehensive and current emissions inventory for NO_x and VOCs for the 2002 base year from which it projected emissions. The inventory is based on emissions from a “typical summer day.”

2. A maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of the designation.

Ecology projected that the total emissions of ozone precursors from Vancouver will decrease through 2015, which is further than 10 years from the effective date of the initial designations for the 1997 8-hour ozone standard (*See* 69 FR 23858, April 30, 2004).

Ecology used air quality modeling to assess the comprehensive impacts of growth through 2015 on ozone levels in the area and demonstrated to the EPA that the highest predicted design value for Vancouver is 0.072 parts per million, which is below the 1997 and the 2008 ozone NAAQS.

3. A commitment to continue to operate ambient air quality monitors to verify maintenance of the 8-hour ozone standard.

Ecology commits to continue operating air quality monitoring stations in accordance with 40 CFR part 58 throughout the maintenance period to verify maintenance of the 1997 8-hour ozone standard, and will submit quality assured ozone data to the EPA through the Air Quality System.

4. A contingency plan that will ensure that any violation of the 8-hour ozone NAAQS will be promptly corrected.

The provisions in the contingency plan are linked to ambient concentrations of ozone and would be triggered if measured ozone levels at any of the ozone monitoring sites exceed early-warning thresholds or if a violation of the 8-hour ozone standard occurs. The contingency measures include a range of response actions that may be selected for implementation.

5. An explanation of how the state will verify continued attainment of the standard under the maintenance plan.

Ecology will continue to monitor ambient air quality ozone levels in the Vancouver portion of the Pdx/Van AQMA and will update countywide emission inventories every three years. If ambient ozone levels increase, Ecology will evaluate the emissions inventory against the 2002 and 2015 inventories in the maintenance plan.

Because the commenter's concerns with the affirmative defense provisions of Washington's SIP have been addressed through the SSM SIP Call and the instant action does not directly affect these existing provisions in Washington's SIP, the EPA is taking final action to approve the ozone maintenance plan as originally proposed.

The EPA emphasizes that approval of the maintenance plan does not relieve SWCAA or Ecology of the responsibility to remove legally deficient SIP provisions pursuant to a SIP call. To the contrary, the EPA maintains that affirmative defense provisions are contrary to CAA requirements and has taken separate action to require correction of those deficiencies. For an explanation of the EPA's interpretation of the CAA with respect to affirmative defense provisions in SIPs, see 80 FR 33840, 33981 (June 12, 2015).

III. Final Action

The EPA is approving the 110(a)(1) ozone maintenance plan for the Vancouver portion of the Pdx/Van AQMA and the new industrial growth allowances that have been used in the maintenance demonstration for this submission. Additionally, the EPA is incorporating by reference into the federally enforceable SIP the revisions to the I/M provisions (WAC Chapter 173-422) that merely reflect the changes as a result of technology upgrades in automobiles and remove inspection fee provisions that had been previously approved into the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Ecology regulations (WAC Chapter 173-422) described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs

on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days from date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 30, 2015.

Dennis J. McLerran,
Regional Administrator,
EPA Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52 –APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart WW - Washington

§ 52.2470 [Amended]

2. Section 52.2470 is amended:

a. In paragraph (c) Table 1 – Regulations Approved Statewide by:

- i. Revising the entries 173-422-020, 173-422-030, 173-422-031, 173-422-060, and 173-422-065, 173-422-070, 173-422-075, 173-422-160, 173-422-190, 173-422-195; and
- ii. Removing the entry 173-422-130.

b. In paragraph (e) in Table 2 – ATTAINMENT, MAINTENANCE, AND OTHER PLANS by adding an entry for “8-Hour Ozone 110(a)(1) Maintenance Plan” at the end of the

table.

The revisions and addition read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 1 – REGULATIONS APPROVED STATEWIDE

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 173-422 Motor Vehicle Emission Inspection				
* * * * *				
173-422-020	Definitions	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	
173-422-030	Vehicle emission inspection requirement	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	
173-422-031	Vehicle emission inspection schedules	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	
* * * * *				
173-422-060	Gasoline vehicle emission standards	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	
173-422-065	Diesel vehicle exhaust emission standards.	7/4/02	[Insert the date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	
173-422-070	Gasoline vehicle exhaust emission testing procedures.	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	
173-422-075	Diesel vehicle inspection procedure.	7/4/02	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	

			<u>Register citation</u>	
*	*	*	*	*
173-422-160	Fleet and diesel owner vehicle testing requirements	3/31/95	<u>[Insert Federal Register publication date] [Insert Federal Register citation]</u>	Except: The part of 173-422-160(3) that says “of twelve or less dollars”.
*	*	*	*	*
173-422-190	Emission specialist authorization	7/4/02	<u>[Insert Federal Register publication date] [Insert Federal Register citation]</u>	
173-422-195	Listing of authorized emission specialists	7/4/02	<u>[Insert Federal Register publication date] [Insert Federal Register citation]</u>	
*	*	*	*	*

* * * *

(e) * *

TABLE 2 – ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
8-Hour Ozone 110(a)(1) Maintenance Plan	Vancouver	1/17/2007	<u>[Insert Federal Register publication date]</u> <u>[Insert page number where the document begins]</u>	

[FR Doc. 2015-19724 Filed: 8/10/2015 08:45 am; Publication Date: 8/11/2015]